

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

United States of America,

v.

Criminal No.: 2:19-cr-00171

Robert James McCabe,

Defendant,

MOTION TO CONTINUE

Now comes the Defendant, Robert McCabe, and respectfully moves the Court to continue his trial now set for February 23, 2021 for the following reasons:

1. That Mr. McCabe was indicted on October 24, 2019 and an original trial date was set for May 27, 2020;
2. That on May 15, 2020, pursuant to the General Order entered by Chief Judge Davis, the trial was continued to December 1, 2020;
3. That counsel for Mr. McCabe also represents Daryl Bank, 2:17cr126, who was indicted on August 23, 2017 and whose case was joined with *U.S. v Kent Maerki, et al*, 2:19cr47, ECF. No. 85, before the Honorable Raymond A. Jackson. Trial with the joined defendants was scheduled for July 7, 2010 but pursuant to a Joint Motion to Continue, ECF. No. 118, by all defendants predicated upon the COVID-19 pandemic, and not opposed by the government, the Court granted the continuance, ECF. No. 120. The trial is expected to last six weeks.
4. That the Court proposed jury trial dates in November and counsel responded, as did other counsel, with conflicts in previous trials that precluded their availability for any

November trial dates. Counsel specifically referenced the instant case and that it was set for trial on December 1, 2020 creating an impossible conflict.

5. On May 26, 2020, Judge Jackson, aware of the conflicts, set the Bank/Maerki, case for trial on November 3, 2020. The case was continued by agreement to December 1, 2020 to accommodate co-counsel's trial schedule. Then, as a result of General Order 2020-22, entered on November 16, 2020, the trial has to be rescheduled again. Judge Jackson set the trial on January 26, 2021, without any input or opportunity to be heard from any counsel.
6. As a result of the length of the trial, six weeks, counsel can not be present on February 23, 20201 to try this case.
7. Counsel has been representing Mr. McCabe for several years now in the pre-indictment investigation of this case. Counsel has met with the government several times, obtained and reviewed thousands of documents, interviewed numerous witnesses and participants in pre-trial litigation on significant issues related to the case. Mr. McCabe deserves the continuity of counsel and the historical knowledge that counsel already possesses. It would be unfair to require him to obtain new counsel and to be prepared for a February 23, 2021 trial.

Memorandum of Law in Support

Whether to grant a motion for a continuance is within the broad discretion of the district court. See, e.g. *United States v. Cronic*, 466 U.S. 648, 662-66 (1984); *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983); and *United States v. Hoyte*, 51 F.3d 1239, 1245 (4th Cir. 1995). The defendant is not seeking a continuance simply for sake of delay. Rather, he seeks additional time so that defense counsel may actually be present for the trial.

Because "the ends of justice served by the granting of a continuance outweigh the best interests of the public and the defendants in a speedy trial," counsel for the defendants ask the Court to grant this motion and continue the trial date. See 18 U.S.C. § 3161(h)(7)(A).

WHEREFORE, defendant respectfully pray for the entry of an order granting this motion.

Respectfully submitted,

Robert James McCabe
By Counsel

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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